

Pension Benefit Guaranty Corporation

§ 4043.61

(ii) The date the loan is accelerated (in the case of a reportable event described in paragraph (a)(2) of this section); or

(iii) The date the debtor receives written notice of the default (in the case of a reportable event described in paragraph (a)(3) of this section).

(3) *Form 1 extension.* The notice date is extended to 30 days after the plan's variable rate premium filing due date for the event year, if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iv) of this section would apply if the "the plan year preceding the event year" were substituted for "the event year."

(4) *Foreign parent and foreign-linked entities.* With respect to a loan default involving only a foreign parent or a foreign-linked entity, the notice date is extended to 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the default and of the controlled group relationship.

(5) *Example.* Company A has a debt with an outstanding balance of \$20 million, for which a payment is due on October 1. Under the terms of the loan, the default may be cured within 10 days. Company A does not make the payment until October 31. Because Company A has made the payment within 30 days of the due date, no reportable event has occurred. If Company A does not make the payment by October 31, a reportable event will have occurred on October 1, and notice will be due by October 31.

§ 4043.35 Bankruptcy or similar settlement.

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group—

(1) Commences a bankruptcy case (under the Bankruptcy Code), or has a bankruptcy case commenced against it;

(2) Commences or has commenced against it any other type of insolvency proceeding (including, but not limited to, the appointment of a receiver);

(3) Commences, or has commenced against it, a proceeding to effect a composition, extension, or settlement with creditors;

(4) Executes a general assignment for the benefit of creditors; or

(5) Undertakes to effect any other nonjudicial composition, extension, or settlement with substantially all its creditors.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A copy of all papers filed in the relevant proceeding, including, but not limited to, petitions and supporting schedules;

(2) The last date for filing claims;

(3) The name, address, and phone number of any trustee or receiver (or similar person);

(4) The name of each member of the plan's controlled group and its ownership relationship to other members of that controlled group; and

(5) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waivers.* Notice is waived if the person described in paragraph (a) of this section is a foreign entity other than a foreign parent.

(d) *Extensions.* Unless the controlled group member described in paragraph (a) of this section is the contributing sponsor of the plan, the notice date is extended until 30 days after the person required to notify the PBGC has actual knowledge of the reportable event.

Subpart C—Advance Notice of Reportable Events

§ 4043.61 Advance reporting filing obligation.

(a) *In general.* Unless a waiver or extension applies with respect to the plan, each contributing sponsor of a plan for which a reportable event under this subpart is going to occur is required to notify the PBGC no later than 30 days before the effective date of the reportable event if the contributing sponsor is subject to advance reporting. If there is a change in contributing sponsor, the reporting obligation applies to the person who is the contributing sponsor of the plan on the notice date.

§ 4043.62

(b) Persons subject to advance reporting. A contributing sponsor is subject to the advance reporting requirement under paragraph (a) of this section if—

(1) Neither the contributing sponsor nor the member of the plan's controlled group to which the event relates is a public company; and

(2) The contributing sponsor is a member of a controlled group maintaining one or more plans that, in the aggregate (disregarding plans with no unfunded vested benefits) have—

(i) Vested benefits amounts that exceed the actuarial values of plan assets by more than \$50 million; and

(ii) A funded vested benefit percentage of less than 90 percent.

(c) *Funding determinations.* For purposes of paragraph (b)(2) of this section—

(1) *Actuarial value of assets.* The actuarial value of plan assets is determined in accordance with § 4006.4(b)(2) of this chapter;

(2) *Funded vested benefit percentage.* The aggregate funded vested percentage of one or more plans is the percentage that the total actuarial values of plan assets bears to the plans' total vested benefits amounts; and

(3) *Testing date.* Each plan's assets and vested benefits amount are determined as of that plan's testing date for the plan year that includes the effective date of the reportable event.

(d) *Shortening of 30-day period.* Pursuant to § 4043.3(d), the PBGC may, upon review of an advance notice, shorten the notice period to allow for an earlier effective date.

§ 4043.62 Change in contributing sponsor or controlled group.

(a) *Reportable event and information required.* Advance notice is required for a change in a plan's contributing sponsor or controlled group, as described in § 4043.29(a), and the notice shall include the information described in § 4043.29(b) and, if known, the expected effective date of the reportable event.

(b) *Waivers—(1) Small plan.* Notice is waived with respect to a change of contributing sponsor if the transferred plan has 500 or fewer participants.

(2) *De minimis 5-percent segment.* Notice is waived if the person or persons

29 CFR Ch. XL (7–1–01 Edition)

that will cease to be members of the plan's controlled group represent a *de minimis* 5-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.63 Liquidation.

(a) *Reportable event and information required.* Advance notice is required for a liquidation of a member of a plan's controlled group, as described in § 4043.30(a), and the notice shall include the information described in § 4043.30(b) and, if known, the expected effective date of the reportable event.

(b) *Waiver.* Notice is waived if the person that liquidates is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event, and each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group.

§ 4043.64 Extraordinary dividend or stock redemption.

(a) *Reportable event and information required.* Advance notice is required for a distribution by a member of a plan's controlled group that would be described in § 4043.31(a) if both assets and liabilities were valued at fair market value. The notice shall include the information described in § 4043.31(b).

(b) *Waiver.* Notice is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.65 Transfer of benefit liabilities.

(a) *Reportable event and information required.* Advance notice is required for a transfer of benefit liabilities, as described in § 4043.32(a) (determined without regard to § 4043.32(d)), and the notice shall include the information described in § 4043.32(b).

(b) *Waivers.* Notice is waived—

(1) In the circumstances described in § 4043.32 (c)(1), (c)(2), and (c)(4); and

(2) If the benefit liabilities of 500 or fewer participants are transferred, in